

Appendix XX:
Federal Independent Dispute Resolution (IDR) Process: Open Negotiation Response Notice
Data Elements

The Departments of the Treasury, Labor, and Health and Human Services (Departments) and the Office of Personnel Management (OPM) have issued regulations that implement the provisions of the No Surprises Act, including rules to establish a Federal independent dispute resolution process (Federal IDR process) that nonparticipating providers or facilities, nonparticipating providers of air ambulance services, and group health plans, health insurance issuers offering group or individual health insurance coverage, or Federal Employees Health Benefits (FEHB) Program carriers may use following the end of an unsuccessful open negotiation period to determine the out-of-network rate for certain items and services. More specifically, the Federal IDR process may be used to determine the out-of-network rate for emergency services furnished by nonparticipating providers or facilities, nonemergency items and services furnished by nonparticipating providers at participating health care facilities, and for air ambulance services furnished by nonparticipating providers of air ambulance services where an All-Payer Model Agreement or specified state law does not apply.

Before accessing the Federal IDR process to determine the out-of-network rate for a qualified item or service, the disputing parties must engage in a 30-business-day open negotiation period to attempt to reach an agreement regarding the total out-of-network rate (including any cost sharing). The Departments and OPM have issued proposed rules that would amend the open negotiation process. Under the current rules, to initiate the open negotiation period, the party must provide notice to the other party and the Departments within 30 business days of the receipt of initial payment or notice of denial of payment for the item or service through the Federal IDR portal. The party initiates the open negotiation period by submitting a written open negotiation notice and payment remittance documentation to the other party and the Departments. Under the proposed rules, the open negotiation period begins on the day that the party submits the open negotiation notice to the other party and the Departments through the Federal IDR portal.

The party in receipt of the open negotiation notice would be required to provide to the other party and to the Departments as soon as practicable, but no later than on the 15th business day of the 30-business-day open negotiation period, a written notice and the supporting documentation in response to the open negotiation notice through the Federal IDR portal.

The table below identifies data elements that group health plans, health insurance issuers offering group and individual health insurance coverage, or FEHB carriers and out-of-network or nonparticipating health care providers, facilities, and providers of air ambulance services would be required to submit as part of an open negotiation response notice.

DATA ELEMENT	DESCRIPTION
Identification of the provider, facility, or provider of air ambulance services	Information sufficient to identify the provider, facility or provider of air ambulance services, including the name and current contact information (including legal business name, email address, phone number, and mailing address) as provided with the claim form submitted by the provider, facility, or provider of air ambulance services to the plan or issuer, and the National Provider Identifier (NPI)
Identification of the plan, issuer, or FEHB carrier	Information sufficient to identify the plan, issuer, or FEHB carrier, including: • The plan's, issuer's, or FEHB carrier's registration number, as proposed under 26 CFR 54.9816-9, 29 CFR 2590.716-9, and 45 CFR 149.530, if the plan, issuer, or FEHB carrier is registered under 26 CFR 54.9816-9, 29 CFR 2590.716-9, and 45 CFR 149.530, or an attestation from the party submitting the open negotiation response notice that the plan or issuer was not registered prior to the date it submitted the notice; • The legal business name of the plan, issuer, or FEHB carrier, as well as the current contact information (name, email address, phone number, and mailing address) of the plan or issuer as provided with the initial payment or notice of denial of payment; and • If the party submitting the open negotiation response notice is a plan or issuer, the plan type (for example, self-insured or fully-insured)
Third-party representative (if applicable)	The name and contact information (including the legal business name, email address, phone number, and mailing address) for any third party representing the party submitting the open negotiation response notice, and an attestation that the third party has the authority to act on behalf of the party it represents in the open negotiation

DATA ELEMENT	DESCRIPTION
Identification of the item or service that is the subject of open negotiation	Information sufficient to identify the item or service that is the subject of open negotiation, including: • Date(s) the item or service was furnished; • If the party submitting the open negotiation response notice is a provider, facility, or provider of air ambulance services, the date(s) that the provider, facility, or provider of air ambulance services received the initial payment or notice of denial of payment for the item or service from the plan, issuer, or FEHB carrier; and • The claim number
Statement about initial payment amount and qualifying payment amount (plans and issuers)	If the party submitting the open negotiation response notice is a plan, issuer, a statement as to whether it agrees that the initial payment amount (including \$0 if, for example, payment is denied) and the qualifying payment amount reflected in the open negotiation notice accurately reflects the item or service, and if not, or if the open negotiation notice indicates that the initial payment amount or qualifying payment amount was not communicated by the plan or issuer in connection with the initial payment or notice of denial of payment or other remittance, the initial payment amount (including \$0 if, for example, payment is denied) and/or qualifying payment amount it believes to be correct, and documentation to support the statement (for example, the remittance advice confirming the qualifying payment amount)
Amount of cost-sharing (applicable to plans, issuers, or FEHB carriers)	If the party submitting the open negotiation response notice is a plan, issuer, or FEHB carrier, the amount of cost sharing imposed for the item or service, if any
Counteroffer or acceptance of an out-of-network rate	A counteroffer for an out-of-network rate for the item or service or an acceptance of the other party's offer
Statement regarding patient consent (applicable to providers and facilities)	If the party submitting the open negotiation response notice is a provider or facility, a statement that the items and services do not qualify for the notice and consent exception described at 45 CFR 149.420(b) or 149.420(c) through (i)

DATA ELEMENT	DESCRIPTION
Statement regarding applicability of the Federal IDR process	With respect to each item or service, either a statement and supporting documentation that explains why the item or service is not subject to the Federal IDR process or a statement agreeing that the item or service is subject to the Federal IDR process
Identification of inaccuracies	A statement as to whether any of the information provided in the open negotiation notice is inaccurate and the basis for the statement, and supporting documentation
Initial payment remittance or notice of denial of payment confirmation	A statement confirming that the initial payment or notice of denial of payment or other remittance advice provided by the party submitting the open negotiation notice is accurate, and if inaccurate, a copy of the accurate initial payment, or notice of denial of payment, or other remittance advice required including the disclosures under 26 CFR 54.9816-6T(d)(1), 26 CFR 54.9816-6(d)(1), 29 CFR 2590.716-6(d)(1), and 45 CFR 149.140(d)(1), with respect to the item or service.

Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The public reporting burden for this voluntary collection of information is estimated to be 45 minutes per response, including time for reviewing general information about requesting assistance, gathering information, completing and reviewing the collection of information, and uploading attachments if applicable. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Research and Analysis, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebssa.opr@dol.gov and reference the OMB Control Number 1210-0169. **Note: Please do not submit the data elements or notice described in this document to ebssa.opr@dol.gov. All Federal IDR process data elements and notices must be submitted through the Federal IDR portal at <https://www.nsa-idr.cms.gov/>.**